

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

Dispute Settlement in Space Law: Are We Ready for the Commercial Challenge? (2)

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UP IN SPACE AND DOWN ON EARTH: A REVISIT TO POTENTIAL DISPUTES OVER
CONTRACTUAL LIABILITY REGARDING MISHAPS IN COMMERCIAL SPACE ACTIVITIES**Abstract**

With burgeoning commercial space activities around the “universe”, there tends to be more complicated disputes arising out of space related transactions. Contractual liability, as one of the dominating themes of disputes as in the event of space mishaps such as launch failure or satellite defects etc., appears to be all the more critical given the high sums of money and high risks involved in space projects. Due to peculiar nature of space activities, for instance the extensive production chain and limited possibility of turning back following launch, the industry has fashioned several unique contract arrangements, such as inter-party waiver of liability, disclaimers of warranty about products’ defects, foregoing of satellite in-orbit performance incentives as exclusive remedies for non-compliance with its specifications, as well as various types of space insurance, in order to insulate manufacturers from exorbitant exposure to liability and at the same time assure necessary protection to customers.

Nevertheless, commercial space contracts remain in many aspects like any other business transaction. For example, the concept of gross negligence is typically embedded into contract clauses as an exception to limitation of liability, exclusion of liability for consequential damages, indemnification etc. Thus, when introduced into space industry contracts, either for procurement at subcontract/supplier level, or for satellite delivery and launch services, this restive element of gross negligence is destined to pierce the armor casted around the approach to contractual liability as mentioned in the previous paragraph.

Bearing in mind varying interpretation in tort and contract law under different jurisdictions, this article intends to discuss, based on case analysis, the threshold for gross negligence with regard to space activities, the extent to which it may be applied to challenge exculpation from liability, how gross negligence interplays with waiver or limitation of liability, warranty, incentive payments, insurance proceeds etc., and more importantly, implications of such application and interaction for disputes management surrounding contractual liability.